

May 2, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JOHN STRANDE PRITCHARD, JR.,

Appellant.

No. 48693-8-II

UNPUBLISHED OPINION

MELNICK, J. – A jury found John Strande Pritchard, Jr. guilty of unlawful possession of a controlled substance, methamphetamine. Pritchard appeals, asserting that the trial court erred by failing to suppress the methamphetamine located on the floorboard of his vehicle. We affirm Pritchard’s conviction.

FACTS¹

While on patrol, Battle Ground Police Sergeant Timothy Wilson pulled behind Pritchard’s vehicle. Soon after, Pritchard pulled over to the side of the road in a way that indicated Pritchard was trying to avoid Wilson or that there was something wrong with Pritchard’s vehicle. Wilson turned around and drove back towards Pritchard. Pritchard proceeded forward and passed Wilson. Wilson again turned around and got behind Pritchard. Pritchard continued for a few more blocks and then pulled over to the side of the road, and put on his emergency flashers. Wilson stopped behind him.

¹ The following facts are taken primarily from the trial court’s unchallenged CrR 3.6 findings of fact, which are verities on appeal. *State v. O’Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003).

Wilson asked Pritchard if he was okay. Pritchard answered that he thought he had a flat tire. Wilson observed that the tire did not look flat. Wilson asked if Pritchard had a driver's license. Pritchard handed Wilson a Colorado driver's license. Wilson asked Pritchard if the license was valid. Pritchard replied that he thought the license was valid. Wilson thought Pritchard appeared unsure and nervous, so Wilson followed up by asking if the license was suspended. Pritchard replied that it might be suspended due to unpaid child support. While standing with Pritchard, Wilson turned on his radio, read the information on the license to a dispatcher over the radio, and for "a fairly brief period of time" waited with Pritchard for the dispatcher's response. Clerk's Papers (CP) at 50. The dispatcher informed Wilson that Pritchard's license was suspended in both Washington and Colorado.

Wilson decided not to arrest Pritchard but asked if Pritchard's passenger had a license and could drive the vehicle. Pritchard opened his car door to talk to the passenger. Wilson observed a white substance on the floorboard that later tested to be methamphetamine.

The State charged Pritchard with possession of a controlled substance, methamphetamine. Pritchard moved to suppress the methamphetamine under CrR 3.6, arguing Wilson unlawfully seized Pritchard prior to locating the drugs. The trial court denied Pritchard's motion to suppress, concluding that Wilson's asking Pritchard if he had a driver's license and Wilson's holding onto the license while he checked its validity were not improper seizures. A jury found Pritchard guilty as charged. Pritchard appeals.

ANALYSIS

I. CrR 3.6 MOTION TO SUPPRESS

Pritchard contends the trial court erred by denying his motion to suppress the methamphetamine located on his vehicle's floorboard. Pritchard argues Wilson lacked reasonable

suspicion to ask Pritchard for his driver's license and lacked reasonable suspicion to retain Pritchard's license; therefore, the subsequently-located methamphetamine should have been excluded as fruits of the poisonous tree. We disagree.

We review a trial court's ruling on a motion to suppress evidence to determine whether substantial evidence supports the trial court's findings of fact and whether those findings, in turn, support the trial court's conclusions of law. *State v. Russell*, 180 Wn.2d 860, 866, 330 P.3d 151 (2014). Unchallenged findings of fact are verities on appeal. *O'Neill*, 148 Wn.2d at 571. We review a trial court's legal conclusions de novo. *State v. Roden*, 179 Wn.2d 893, 898, 321 P.3d 1183 (2014).

The Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution prohibit a warrantless search and seizure unless the State demonstrates that one of the narrow exceptions to the warrant requirement applies. *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). The exclusionary rule requires suppression of all evidence obtained pursuant to a person's unlawful seizure. *State v. Winterstein*, 167 Wn.2d 620, 632, 220 P.3d 1226 (2009).

A. Driver's License Inquiry

“Not every encounter between an officer and an individual amounts to a seizure.” *State v. Armenta*, 134 Wn.2d 1, 10, 948 P.2d 1280 (1997) (quoting *State v. Aranguren*, 42 Wn. App. 452, 455, 711 P.2d 1096 (1985)). A seizure occurs if, “in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.” *State v. Mecham*, 186 Wn.2d 128, 137, 380 P.3d 414 (2016) (quoting *State v. Young*, 135 Wn.2d 498, 510, 957 P.2d 681 (1998)). An officer who merely asks questions or requests identification does not necessarily elevate a consensual encounter into a seizure. *State v. Barnes*, 96 Wn. App.

217, 222, 978 P.2d 1131 (1999). An encounter will not lose its consensual nature unless the police convey that compliance with their requests is required. *Florida v. Bostick*, 501 U.S. 429, 435, 111 S. Ct. 2382, 115 L. Ed. 2d 389 (1991).

Here, Pritchard freely conversed with Wilson when Wilson stopped to see if Pritchard was okay. Wilson asked Pritchard if he had a driver's license. Pritchard took this as a request for his driver's license and freely handed his Colorado driver's license to Wilson. Police actions that likely result in a seizure include the use of language or tone of voice indicating that the compliance with the officer's request might be compelled. *State v. Harrington*, 167 Wn.2d 656, 664, 222 P.3d 92 (2009). There is no showing that Wilson coerced Pritchard to give Wilson the license by merely asking if Pritchard had a driver's license. Thus, Wilson's question of whether Pritchard had a driver's license and Pritchard's response of handing Wilson his license did not elevate the consensual encounter into a seizure.

B. Driver's License Validity Check

Pritchard next argues that an unlawful seizure occurred when Wilson held Prichard's driver's license while contacting dispatch. We disagree.

Whether a reasonable person would believe he was detained depends on the particular, objective facts surrounding the encounter. *Armenta*, 134 Wn.2d at 11. A consensual social contact can escalate into a seizure. *Harrington*, 167 Wn.2d at 666.

In *State v. Thomas*, 91 Wn. App. 195, 200-01, 955 P.2d 420 (1998), the court held that a seizure occurred when an officer, while retaining the defendant's identification, took three steps back to conduct a warrants check on his hand-held radio. The court held, "Once an officer retains the suspect's identification or driver's license and takes it with him to conduct a warrants check, a

seizure within the meaning of the Fourth Amendment has occurred.” *Thomas*, 91 Wn. App. at 200-01.

Similarly, in *State v. Dudas*, the court determined that a seizure occurred after a deputy took Dudas’s identification card and returned to the deputy’s patrol car, thus immobilizing Dudas. 52 Wn. App. 832, 834, 764 P.2d 1012 (1988). And, in *Aranguren*, the court found that a seizure occurred when an officer took the defendants’ identification documents to his vehicle to write their names down and run warrant checks on them. 42 Wn. App. at 456.

In each of the above cases, the officer removed the defendant’s identification from the defendant’s presence. Here, Wilson and Pritchard stood next to each other while Wilson called dispatch about the validity of Pritchard’s driver’s license. This case would be analogous to *State v. Hansen*, 99 Wn. App. 575, 579, 994 P.2d 855 (2000) where officers never removed Hanson’s license from Hanson’s presence while holding the license and taking notes. The court held there was no reason to lead “a reasonable person to believe that he was not free to leave.” *Hansen*, 99 Wn. App. at 579. Similarly, here, the initial consensual encounter did not ripen into an unlawful detention while Wilson and Pritchard stood by each other and Wilson contacted dispatch.

Even assuming the consensual social contact escalated into a seizure while Wilson was holding Pritchard’s license, the seizure would be justified because Pritchard informed Wilson that his license was possibly suspended due to unpaid child support. In general, a report of a suspended license provides reasonable suspicion of criminal conduct sufficient to justify a seizure. *State v. Phillips*, 126 Wn. App. 584, 588, 109 P.3d 470 (2005). Wilson was justified in checking the license’s validity.

In sum, the trial court’s findings support its conclusion that Wilson’s request for Pritchard’s license and Wilson’s holding onto the license while standing next to Pritchard and checking the

license's validity were not improper seizures. The trial court did not err in denying Pritchard's CrR 3.6 motion to suppress the methamphetamine subsequently located on his vehicle's floorboard.²

II. APPELLATE COSTS

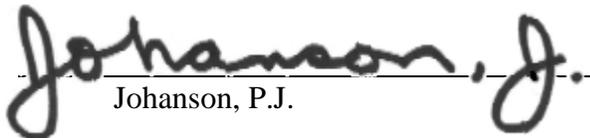
Pritchard requests that we waive the imposition of appellate costs due to his inability to pay such costs. Because the State has indicated that it will not seek appellate costs in this matter, we need not address Pritchard's waiver request.

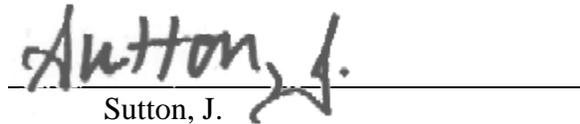
We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


Melnick, J.

We concur:


Johanson, P.J.


Sutton, J.

² The trial court also concluded that Wilson observed the methamphetamine "in plain view." CP at 52. Pritchard does not assign error to this conclusion of law. An officer may seize evidence without a warrant if he or she has made a justifiable intrusion and he or she is immediately able to realize that an item they can see in plain view is associated with criminal activity. *State v. Hatchie*, 161 Wn.2d 390, 395, 166 P.3d 698 (2007). Since Wilson's initial encounter with Pritchard was lawful, the subsequent plain-view sighting of the methamphetamine would be lawful as well.